

IN THE MATTER OF APPEALS OF LAW,)	
)	FILE NO: L030167-71, 78-79
GRIFFITH, BOHN, GUENTER, AND GIVENS OF)	
)	
THE TECHNICAL COMMITTEE'S DECISIONS)	
)	DECISIONS
REGARDING APPROVAL OF THE SHORT PLAT)	
)	
OF HERITAGE WILSHIRE)	
)	

The decisions of the Technical Committee to require access to the Heritage Wilshire short plat from NE 41st Street by way of an undeveloped right-of-way north of the site and to approve the short plat are **AFFIRMED**. The appeals therefrom are **DENIED**.

These are appeals of two decisions of the Technical Committee (1) to require access for the Heritage Wilshire short plat from NE 41st Street and (2) to approve the short plat of the Heritage Wilshire. The appeals came on for hearing before Gordon F. Crandall Hearing Examiner on August 18, 2003 at 7:00PM.

Testifying under oath were:

Thomas Bohn, appellant

**City of Redmond
Office of the Hearing Examiner
P.O. Box 97010
Redmond, WA 98073-9710**

1 Susan Bohn, appellant
2 Jack Griffith, appellant
3 Barry Givens, appellant

4 The following exhibits were offered and admitted:

5 Exhibit A: Technical Committee Report with Attachments dated July 28, 2003
6 Exhibit B: Staff PowerPoint Presentation
7 Exhibit C: Staff Approved Short Plat Map, submitted by applicant
8 Exhibit D: Survey of NE 41st Street Map, submitted by applicant
9 Exhibit E: Tree Survey Map, submitted by applicant
10 Exhibit F: Map Depicting Proposed NE 40th Street Access, submitted by applicant
11 Exhibit G: Sight Distance on NE 40th Street Map, submitted by applicant
12 Exhibit H: Manchester Estates Resident and Applicant's Response to Technical
13 Committee Report dated July 28, 2003
14 Exhibit I: Seven Photos of Area Impacted Submitted by Mark Law
15 Exhibit J: Letter from Windermere Real Estate to Mark Law re: Property Values
16 Exhibit K: Letter from King County Board of Equalization to Jack Griffith, dated
17 September 24, 1993
18 Exhibit L: Original Cedar Estates Plat Map submitted by staff
19

20 The hearing adjourned at 9:15 PM. From the foregoing, the Hearing Examiner makes the
21 following:
22

23 FINDINGS OF FACT

- 24 1. Ryan Fike of Bennett Development received approval of the Heritage Wilshire short plat
25 to develop six single-family residential plots on a 1.5-acre tract in Redmond. Three of the
26 lots will abut an internal roadway, and the other three lots will abut both the internal
27 roadway and NE 40th Street. The approved plat requires that all lots will be accessed from
28 NE 41st Street via a 50 -foot street right of way dedicated to the City in 1979 in the plat of
29 Cedar Estates. A copy of the approved Heritage Wilshire short plat is attached as
30 Attachment 1.

2. The site is located at 16618 NE 40th Street and its prior use was as a “U-Fish” facility. That use had access to NE 40th Street.
3. In November 1979, the plat of Cedar Estates was recorded. In that plat, the owner dedicated to the City a 50-foot right-of-way for future road extension. The dedication recites that the owners dedicated to the public forever, all roads, easements, ways and a tract for a park and open space, with the right to make all necessary slopes for cuts and fills, etc. A copy of the relevant portions of the plat is attached as Attachment 2. Residents of Cedar Estates call their homeowners’ association “Manchester Homeowners’ Association.”
4. Appellant Mark Law’s residence is at 16631 NE 41st Street and lies west of the 50-foot right-of-way. (Lot 21 Cedar Estates) His driveway and garage are at the rear of the home, and he uses the right-of-way to access the street. Jack Griffith’s residence at 16703 NE 41st Street lies just east of the 50-foot right-of-way, (Lot 22, Cedar Estates) and his garage is also at the rear of his house. Law and Griffith have a joint driveway in the right-of-way leading to 41st Street. Both have established landscaping and paving within the right-of-way.
5. In it’s decision to require access for the short plat from NE 41st Street and approving the short plat, the Technical Committee relied upon Policy TR-71 of the Redmond Comprehensive Plan, Appendix 20D-3 of the Redmond Community Development Guide (RCDG) and a publication from the American Association of State Highway and Transportation Officials (AASHTO). Each of these sources indicated that property access to streets should be made to those of a lower classification. NE 40th Street is a minor arterial. NE 41st Street is a local access street, a lower classification.
6. Appellants made 23 objections to the Technical Committee’s decision to require access to NE 41st Street. They allege that access to NE 40th Street would be a safer alternative even though it is an arterial; that the NE 41st Street access will create unsafe conditions for

1 pedestrians and motorists; that construction of the access road cannot be done from an
2 engineering perspective; that grading the right-of-way will result in a steep driveway for
3 Law's residence and that when the street is being graded they will lose direct access to
4 their home for a considerable amount of time; that a retaining wall next to Law's home
5 will be required and will render exiting cars on the right-of-way essentially invisible; and
6 that the City has verbally abandoned the right-of-way; that existing drainage problems
7 will be exacerbated; that the Comprehensive Plan applies only to new development, not
8 to re-development; that trees on and off the right-of-way will be adversely affected; and
9 that their property values will be decreased.

- 10
- 11 7. The City replied to the objections by stating that the NE 41st Street access can be made
12 safe; that construction of a 28-foot roadway on a 50-foot right-of-way is practical; that
13 Law can make his driveway less steep by cooperating with the developer when the road
14 is graded; that a developer grading a road cannot deny access to a resident for more than
15 48 hours; that the development must insure that adequate sight lines from the road are
16 maintained; that the City of Redmond has not abandoned the right-of-way and that the
17 intent of requiring the dedication in Cedar Estates was to provide this access; that
18 drainage problems will be lessened, not made worse; that the Comprehensive Plan
19 policies apply to this application; that the RCDG permits removal of trees in the right-of-
20 way which will be replaced on a one-to-one basis; and that the proposed development and
21 road are consistent with the area's zoning and existing land uses.

- 22
- 23 8. Any conclusion of law deemed to be a finding of fact is hereby adopted as such.
- 24

25 From these findings of fact, the Hearing Examiner makes the following:

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27 **CONCLUSIONS OF LAW**

- 28 1. The decision to require access to the short plat from NE 41st Street is an Administrative
29 Type II decision, appealable to the Hearing Examiner. The decision on a short plat is
- 30

also a Type II review appealable to the Hearing Examiner. RCDG 20F.30.35. The Hearing Examiner's determinations are subject to the appeal to the City Council.

2. Policy TR-64 of the Redmond Comprehensive Plan classifies streets in the following order:

- i) freeway/expressway,
- ii) principal arterial street,
- iii) minor arterial street,
- iv) collector arterial street, and
- v) local access street.

Policy TR-71 provides that the City should maximize the functionality and safety of the local circulation system while minimizing environmental impacts by, among other things, 'emphasizing property access to streets with lower classifications;'

3. Construction specifications and design standards for streets and access in Appendix 20D-3 of the RCDG defines a "minor arterial" as a street that

"provides for traffic movement within developed areas and between principal arterial streets and collector arterial streets and local access streets. They serve traffic between neighborhoods. Their function is traffic service and secondarily to provide access to adjacent residences."

"Local access streets" are defined as streets that

"provide for direct access to abutting property with connections to collector and arterial streets. Their function is land access service. They include public and private roadways in the following areas:

- i. Single-family residential
- ii. Multi-family
- iii. Commercial and industrial"

- 1 4. The American Association of State Highway and Transportation Officials (AASHTO)
2 recommends that
3 “regulated limitation of access is needed on arterials to enhance their primary
4 function of mobility. Conversely, the primary function of local roads and streets is to
5 provide access.”, and
6 “Direct property access should be denied or limited on higher class routes whenever
7 reasonable access can be provided to a lower class roadway.”
8
9 5. In Washington State a street right-of-way is usually an easement for public travel and
10 associated uses. The owner of property abutting a street owns the fee title to the center of
11 the street and may use this street area in any manner not inconsistent with the City’s
12 easement. In Nystrand vs. O’Malley, 60 Wn2nd792 (1962) the Court held that an abutting
13 owner was entitled to extend a garage onto an unopened street area and to plant trees, a
14 hedge, and to construct a bulkhead thereon, since the right to open the street for public
15 use had not been asserted by the City.
16
17 6. A City cannot by inaction or informal means abandon a dedicated street. The statutory
18 street vacation process (RCW Ch35.79) is ordinarily the exclusive means by which a City
19 may divest itself of a street.
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21 7. When considering an appeal of an administrative decision or short plat approval, the
22 Hearing Examiner is required to accord substantial weight to the decision of the
23 applicable department director or technical committee. RCDG 20F.30.30-070; 20F.30.35-
24 110.
25
26 8. The Hearing Examiner has carefully considered the submissions and the testimony and
27 exhibits, and concludes that the appeals should be denied. The staff has provided
28 satisfactory answers to all of the 23 objections made by appellants. The improvements to
29 the right-of-way made by Law and Griffith or their predecessors were perfectly lawful, as
30

1 shown by Nystrand vs. O'Malley, supra. So long as the City did not assert its right to
2 open a street, these owners could make use of the land in which they owned the fee.

3
4 Now the City asserts its right to open the street, and appellants must yield to this right.
5 The City cannot abandon a dedicated street, and it cannot be acquired by adverse use or
6 possession. The City is on solid ground by denying access from an arterial street when a
7 local access street is available. This street was dedicated to the City in 1979 just for this
8 purpose.

9
10 The Hearing Examiner is satisfied that the traffic safety arguments of the appellants can
11 be dealt with. The City has indicated that if needed a 'bulb-out' traffic calming facility
12 can be required and that a stop sign at NE 41st Street is a possibility if needed.
13 Construction of a 28-foot roadway in a 50-right-of-way is certainly feasible. In addition,
14 the City and the developer have the right to make all necessary slopes for cuts and fills on
15 the abutting property to accommodate the road. See Exhibit L, Dedication. Temporary
16 construction easements from these adjoining properties should not therefore be required.
17 Law's driveway can be made usable if he cooperates with the developer when the road is
18 graded. Drainage will be better controlled, as a series of catch basins will capture water
19 from the road.

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21 The remaining arguments opposing access to NE 41st Street are without merit.

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23 9. Any finding of fact deemed to be a conclusion of law is hereby adopted as such
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1 **DECISION**

2 The decisions of the Technical Committee to require access to the short plat from NE 41st Street
3 by way of the undeveloped right-of-way north of the site and to approve the Heritage Wilshire
4 short plat are **AFFIRMED**. The appeals therefrom are **DENIED**.

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7 Dated this 3rd Day of September 2003.
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9

10 _____
11 **GORDON F. CRANDALL**
12 **HEARING EXAMINER**

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14 Attachment 1: Approved short plat of Heritage Wilshire
15 Attachment 2: Relevant portions of Cedar Estates plat
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Any party of record may file a written request for reconsideration by the Examiner. Requests for reconsideration must be filed with the **Office of the Hearing Examiner**, City of Redmond, Mail Stop: PSFHE, 8701 160th Avenue NE, P.O. Box 97010, Redmond Washington, 98073-9710, no later than **5:00 p.m. on September 15, 2003**. **A request for reconsideration shall explicitly set forth alleged errors of procedure or fact.** Timely filed requests for reconsideration will be processed pursuant to RCDG, Appendix 20F-2, § IX.C.3.

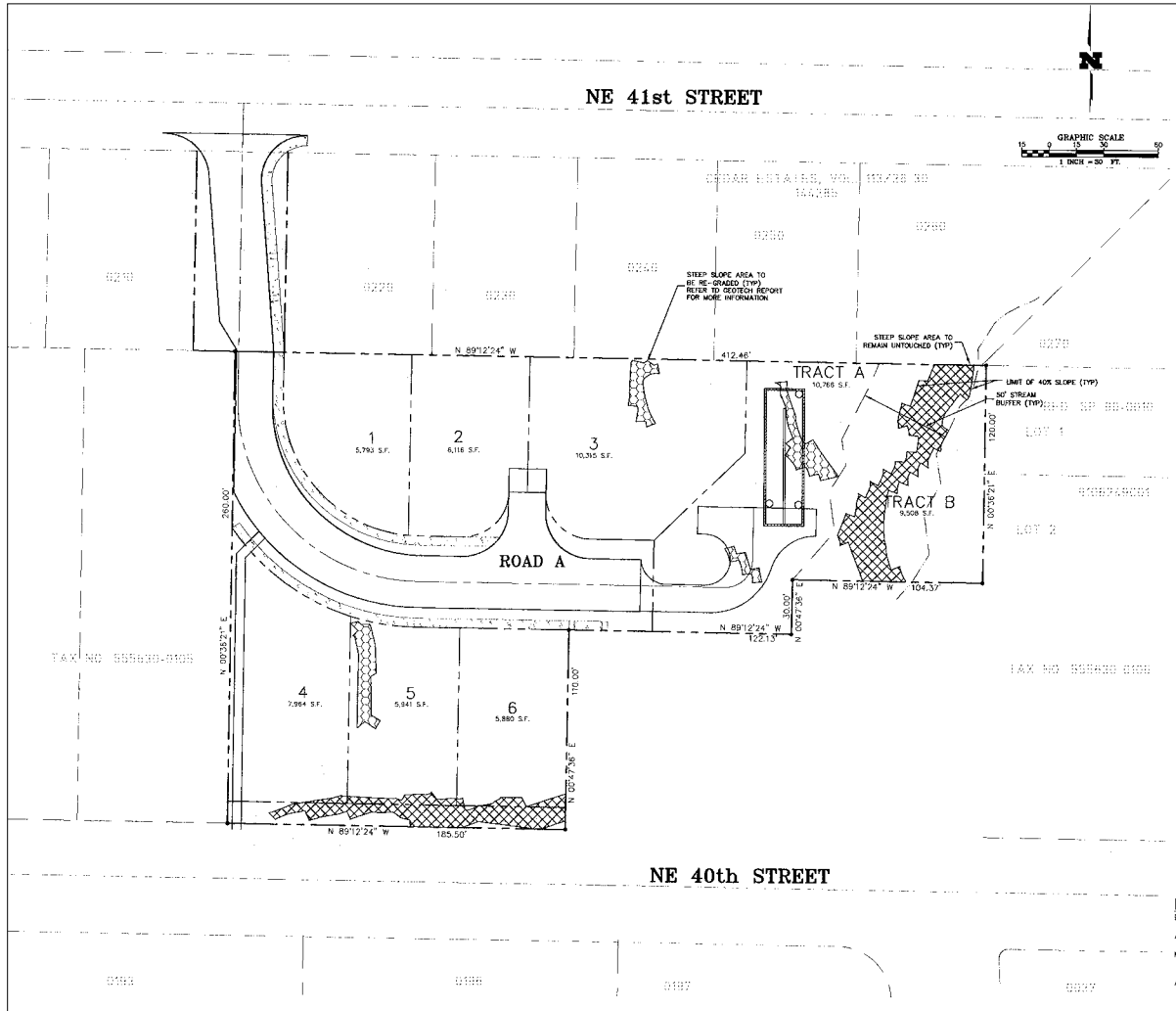
NOTICE OF RIGHT OF APPEAL

You are hereby notified that the foregoing Findings of Fact, Conclusions of Law, and Decision, are the final action on this application subject to the right of appeal to the Redmond City Council. Appeal procedures are governed by RCDG 20F.30.35-120 (Ordinance 2102) to which the reader is referred for detailed instructions. The written appeal must be received by the **Redmond Permit Center** no later than **5:00 P.M. on September 15, 2003 or within 10 business days following final action by the Hearing Examiner if a request for reconsideration is filed.** Please include the application number on any correspondence regarding this case.

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”

ATTACHMENT 1

HERITAGE WILSHIRE SHORT PLAT



ATTACHMENT 2 ORIGINAL PLAT OF CEDAR ESTATES

CEDAR ESTATES

113-28

SECTION 13, TOWNSHIP 25 NORTH, RANGE 5 EAST, W.M.

CITY OF REDMOND

KING COUNTY, WASHINGTON

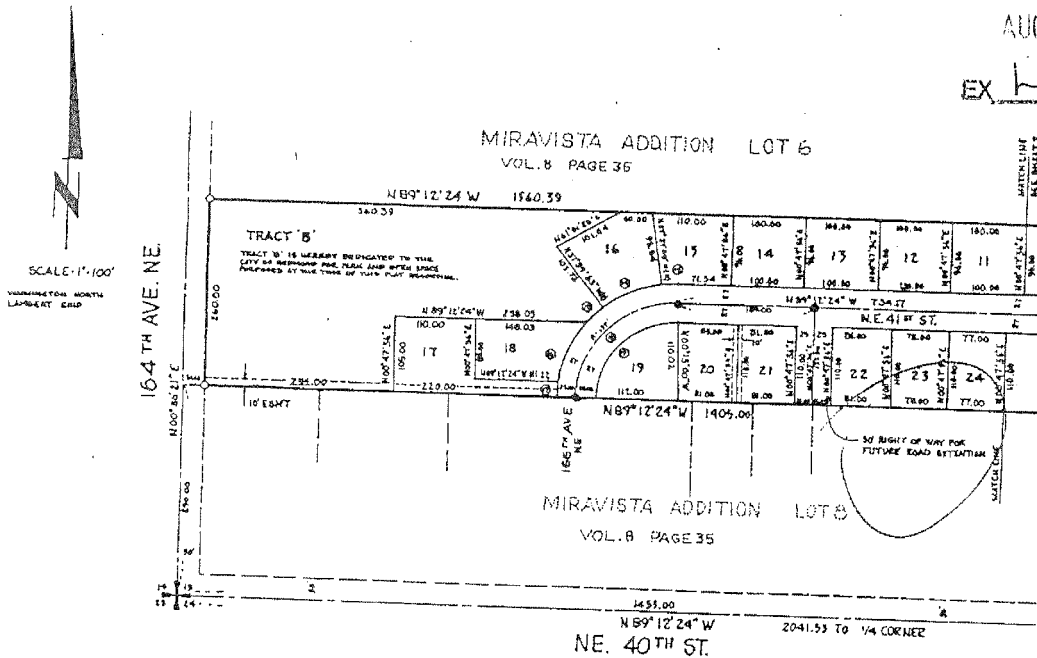
HEARING EXAMINER

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CITY OF REDMOND

AUG 18 2003

EX FILE# 1020211



ADDITIONAL EASEMENT PROVISIONS

A. LOTS 1, 2, 3 AND 4 IN THIS SUBDIVISION IS GRANTED AND CONVEYED AN UNDIVIDED INTEREST IN THE PRIVATE ACCESS ROAD TRACT 'A', SHOWN HEREON FOR INGRESS, EGRESS, DRAINAGE AND UTILITIES TO SERVE THE RESPECTIVE LOTS. THERE SHALL BE NO PUBLIC EASEMENT OR RIGHT-OF-WAY, EXCEPT AS OTHERWISE NOTED, BUT THE CITY OF REDMOND AND OTHER UTILITIES ARE GRANTED AN EASEMENT OVER, UNDER AND ACROSS SAID PRIVATE ACCESS ROAD FOR THE INSTALLATION, MAINTENANCE AND OPERATION OF UTILITY SERVICES, INCLUDING SANITARY SEWER, STORM DRAINAGE, WATER, ELECTRIC POWER, GAS, TELEPHONE, CABLE TV, GARBAGE, AND OTHER SIMILAR UTILITY SERVICES. THE MAINTENANCE AND REPAIR OF THE PRIVATE ACCESS ROAD SHALL BE THE RESPONSIBILITY OF THE OWNERS OF EACH LOT HEREIN HAVING THE USE THEREOF AND EACH SUCH LOT OWNER SHALL PAY THEIR PROPORTIONATE SHARE OF THE COST INCURRED.

B. TWENTY (20) FEET ADJACENT TO BELLEVUE-REDMOND ROAD AND N.E. 40TH STREET (LESS TEN (10) FEET OF RIGHT-OF-WAY), FORTY (40) FEET ON EACH SIDE OF THE EASTERN CREEK (EXCEPT FOR THE ONE PERMITTED CROSSING-ILLIC) AND IN LIEU OF DONATION TO THE CITY, THE BOTTOM LAND AND SLOPES EXCEEDING 30% ADJACENT TO THE WESTERN CREEK SHALL BE COVERED WITH A NATIVE GROWTH PRESERVATION EASEMENT.

CURVE DATA							
○	R	L	Δ	○	R	L	Δ
13	164	2408	08°24'45"	18	157	21320	90°00'00"
14	164	8600	30°02'44"	19	110	172.79	90°00'00"
15	164	3357	17°43'45"				
16	164	9390	37°48'25"				
17	164	2005	07°00'21"				

LAND SURVEYOR'S CERTIFICATION

I, WAYNE E. CHASTAIN, HEREBY CERTIFY THAT THIS PLAT OF CEDAR ESTATES IS BASED UPON AN ACTUAL SURVEY AND SUBDIVISION OF SECTION 13 TOWNSHIP 25 NORTH, RANGE 5 EAST, W.M., KING COUNTY, WASHINGTON, AND THE COURSES AND DISTANCES ARE SHOWN HEREON CORRECTLY, THAT THE MONUMENTS WILL BE SET AND THE LOTS STAKED ON THE GROUND, AND THAT I HAVE FULLY COMPLIED WITH THE PROVISIONS OF THE STATUTES AND PLATTING REGULATIONS.

Wayne E. Chastain
WAYNE E. CHASTAIN, P.L.S.
CERTIFICATE NO. 10356



TOWNSEND-CHASTAIN & ASSOC., INC.



DEVELOPMENT CONSULTANTS
LAND SURVEYORS

409 SOUTH 3RD AVENUE
KENT, WASHINGTON 98031
(206) 854-2043

City of Redmond

Office of the Hearing Examiner

P.O. Box 97010

Redmond, WA 98073-9710

Heritage Wilshire Appeals-11

September 3, 2003